

REMARKS

The claims of the application under consideration stand rejected on two grounds: claims 1 and 3 (and those claims depending there from) have been rejected under 35 USC §112 ¶2 as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention; claims 1-9 have been rejected under 35 USC §102(b) as being anticipated by Fisher et al. (US 5,835,896), hereinafter the '896 patent. The following paragraphs constitute applicant's response to the Examiner's initial examination of the pending claims.

An essential difference between the presently claimed invention and the technology disclosed in the '896 patent relates to the nature of communication from the central computer to the remote bidders. The mode of communication (status updates) disclosed in the '896 patent is not real time, and may be characterized as user-derived "pull" technology. For example, after a new bid has been received, the central computer equivalent in the '896 patent updates its database and generates a new web page for subsequent review. Column 6 at lines 39-45. The applicants for the '896 patent realized the limitations of their auction software: "Because most bidders will not, in general, be accessing the network and viewing the merchandise catalog pages as they are updated with new high bids, the system may send electronic mail notifications to bidders who have been outbid by the just-placed bid." Column 6, lines 46-50.

The consequence of the auction model established in the '896 patent is that the computerized bidding process does not emulate a live bidding process where information on the state of the bid and bidder competition is conveyed in real time. In contrast, the applicants have provided an environment that does convey the state of the auction (and thus bidder information) in real time to the group of bidders. To emphasize this aspect of the invention, applicants have amended claims 1 and 2 to reflect this mode of information dissemination. In this

respect and concerning web-based modes, applicants' invention uses "push" or autonomous "pull" technologies. An example of "push" technology would be RSS feeds while an example of autonomous "pull" technology would be page-associated applets periodically refreshing the page to ensure the most current page definition is being displayed. In either case, there is no need for a user to seek the status of the auction as it is provided to him or her. By having such information presented in real time, a more faithful emulation of a live auction can be achieved, which emulation could not be achieved regarding the '896 patent model.

While real time broadcasting of the auction state and related information forms a part of the invention, such means are not exclusive and do not operate to exclude other means that may not be real time. Thus, it is only required that such means exist and are employed, but not to the exclusion of other means.

As amended, independent claims 1 and 2 clearly define over the prior art of record with respect to anticipation. Applicants submit that the invention as embodied in the amended claims is also not obvious in view of the prior art of record. There is no suggestion or teaching in the '896 patent that would lead a skilled practitioner to establish or exploit technology that would provide real time dissemination of auction information. This lack of awareness by the inventors of the '896 patent severely handicaps its use in §103(a) rejection.

Finally, applicants wish to point out that the phrase "Providing electronic data, in real time...." is not equivalent to providing an updated web page for user determined reloading. In the first instance, the verb "providing" is not equivalent to the verb phrase "making available", which is what is practiced in the '896 patent with respect to web pages. "Providing" is what occurs in the '896 patent with respect to sending email messages. However, that process cannot be considered to occur in real time, particularly if POP3 protocol were used by the group.

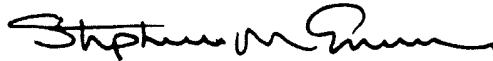
In light of the foregoing, applicants submit that the invention of amended claims 1 and 2 patentably defines over the prior art of record, and by virtue of their dependency, the remaining claims do as well. Applicant respectfully requests that the Examiner withdraw the rejections of claims 1 - 9 in view of applicant's amendments and remarks. Additionally, applicants submit herewith a Petition for Extension of Time (3 months) and payment there for. Should any additional fees be required in order to consider this response either timely or proper, please charge them to Deposit Account No. 07-1897.

If the Examiner believes that a telephone interview would be helpful, he is respectfully requested to contact applicants' attorney at (425) 455-5575.

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Respectfully submitted,

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